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# In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 455

MARIE ELIZABETH ELG, PETITIONER

*v.*

FRANCES PERKINS, SECRETARY OF LABOR, EDWARD J. SHAUGHNESSY, ACTING COMMISSIONER OF IMMIGRATION AND NATURALIZATION, AND CORDELL HULL, SECRETARY OF STATE

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA*

## MEMORANDUM FOR CORDELL HULL, SECRETARY OF STATE

The petition herein seeks review of the decision of the Court of Appeals for the District of Columbia in so far as that court held that the Secretary of State was not a proper party to the proceeding.

On July 16, 1936, the petitioner filed an application for a passport as a United States citizen, which was transmitted to the Department of State. On July 29, 1936, petitioner was informed by the Chief of the Passport Division of the Department of State that her application was denied on the ground



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that she was not an American citizen (R. 4). The petitioner recognizes (Pet. 11) that the granting of a passport is discretionary, and that a court cannot be asked to compel the issuance of a passport. The petitioner insists, however, that she is entitled to a declaratory judgment directed against the Secretary of State which will establish her status as an American citizen and which will therefore have the effect of requiring the Secretary of State or those acting for him to exercise their discretion as in the case of an application by any American citizen.

It will be observed that the application for a passport and the denial thereof occurred more than two years ago. In order that the information required of an applicant shall have reference to the present, it is within the power of the Secretary of State to require that a new application be presented in the event that the petitioner now wishes to leave the country.[1] The decision of this Court in No. 454, if the Court grants the Government's petition for certiorari therein, will, of course, determine the status of petitioner and will

[1] The passport regulations issued by the Department of State provide (pars. 32, 34, 35) that each application of a native citizen for a passport must contain, *inter alia*, the name of the port from which, and the name and date of sailing of the vessel upon which, the applicant intends to depart from the United States; the names of the countries the applicant intends to visit and the object of the visit to each; and the period within which the applicant intends to return to the United States.

be regarded by the Secretary of State as controlling in relation to his jurisdiction to issue a passport to the petitioner. Consequently, there appears to be no occasion for the granting of the petition herein in order to review the correctness of the action of the courts below in ordering the bill dismissed as against the Secretary of State.

Respectfully submitted.

ROBERT H. JACKSON,
*Solicitor General.*

GREEN H. HACKWORTH,
*Legal Adviser, Department of State.*

NOVEMBER 1938.

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